



City of San Antonio, Texas

Ethics Advisory Opinion No. 2015-06

November 3, 2015

Issued By: City Attorney's Office

I. Issue:

Whether or not a City Department may accept a gift on behalf of the City, when the gift was a prize initially won by a City employee through a random drawing held by a City vendor at a widely attended conference?

II. Inquiry

A City employee attended a large conference, which related to her official duties for the City. At the conference, she filled out a ticket form, including her name and cell phone number, and dropped the form in several bowls set out by vendors, to be eligible to win a variety of prizes being awarded during the conference. She did not put her affiliation with the City on the tickets. One of the vendors called her to inform her that she had won an item in a drawing. When she arrived at the booth to collect the prize, valued at just over \$50, she discovered the vendor was a registered City vendor, currently providing services to the City, although not to her Department. She contacted her supervisor regarding the award, and did not take the item with her when she left. The vendor then called her supervisor, and asked if the item could be given to the City via the Department, rather than the employee. The supervisor then inquired whether or not this was permissible under the Ethics Code.

III. The Ethics Code

Section 2-45 Gifts

A. Restrictions on the Receipt of Gifts and Benefits by City Employees

The Ethics Code contains two rules which regulate the acceptance of gifts or benefits by City employees. The first restricts gifts given with the intent to influence or reward a City official or employee for official action:

A City official or employee shall not solicit, accept, or agree to accept any gift or benefit for himself or herself or his or her business:

(A) that reasonably tends to influence or reward official conduct; or

(B) that the official or employee knows or should know is being offered with the intent to influence or reward official conduct. Ethics Code, Section 2-45(a)(1).

The second rule restricts gifts from specific sources, regardless of the motivation for the gift:

A city official or employee shall not solicit, accept, or agree to accept any gift or benefit, from:

(A) any individual or business entity doing or seeking to do business with the City; or

(B) any registered lobbyist or public relations firm; or

(C) any person seeking action or advocating on zoning or platting matters before a city body.

Ethics Code, Section 2-45(a)(2). This rule provides an exception for gifts up to \$50 in value.

In this instance, the City employee has been offered a benefit with financial value of greater than \$50 from a City vendor. Since the vendor awarded the prizes through a random selection, and the ticket did not indicate the winner was a City employee, there is no indication the entity has offered the prize with the intent of influencing or rewarding official conduct, so the first rule does not appear to be applicable.

The second rule imposes restrictions regardless of intent, on gifts from three specific sources: those doing or seeking business with the City; registered lobbyists; and those seeking action or advocating on a zoning or platting matter. The vendor does business with the City and so the restrictions of the second rule would apply, even if the business is not conducted with the Department for which the employee works.

The question is whether this gift prohibition would apply if the benefit was provided through random selection instead of being given directly to the City employee with the intent that she, as a City employee, be the specific recipient. Section 2-45(a)(2) states that a City employee may not accept a benefit valued at more than \$50 from a City vendor. No exception is provided for benefits given through random selection. The restriction is based on the status of the recipient as a City employee and the donor as a City vendor. See Texas Ethics Commission Advisory Opinion No. 396 (1998) (whether a public servant may accept a particular gift under the Texas Penal Code depends on the nature of the gift and the status of the donor.) Therefore, given that the gift has been provided by a City vendor, and that the value is more than \$50, the employee cannot accept the door prize.

The Supervisor has inquired whether or not the subsequent offer by the vendor to give the prize to the City, instead of the employee, could be accepted. The City's Ethics Code provision does not address gifts made to the City, but to employees and officials. Therefore, the Department, on behalf of the City, could accept the gift, in accordance with established City policies regarding gifts and contributions to the City. However, the Department must first determine whether or not there is an appearance of impropriety in so doing. The preamble of the Ethics Code, in Section 2-41, requires City employees to adhere to the principles of ethical conduct set forth in the Ethics Code and must scrupulously avoid the appearance of impropriety at all times.

IV. Conclusion

The City employee is prohibited from accepting the gift from a City vendor, by Section 2-45(a)(2) of the Ethics Code. However, when a gift is offered to the City of San Antonio, the gift is not a personal gift to an employee, and is not prohibited under the Ethics Code. The Department may accept the gift, but only after ensuring the acceptance does not create the appearance of impropriety, and must do so in accordance with established City policies regarding gifts and contributions. The Department may also decline the offer of the gift.